IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 1193 of 1993

Between:

1.Paramasetti Narasimha Murthy (died by L.Rs.)

2.P.Suryakantham, wife

3.P.Srinivasa Rao, son

4.P.Satyanarayana, son

5.P.Malleswara Rao, son

6.P.Rama Babu, son (minor)

7.P.Vijayalakshmi,daughter (minor)

Petitioners 2 to 7 were brought on record as L.Rs of 1st petitioner as per Court order, dt 30-3-1998 in WPMP 8685 of 1998. Petitioners 6 and 7 are minors represented by their mother, 2nd petitioner.

..... PETITIONERS

AND

1.Sri Rajagopalaswamivari Devasthanam,

rep.by the trustee, Sri Vemana Trimurthulu

Nadigadi village, hamlet of Dokkavari Gannavaram,

Razole taluk, East Godavari District.

2.The Estate Abolition Tribunal,East Godavari District

at Rajahmundry.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records in T.A.No.1 of 1981 on the file of the Estates Abolition Tribunal, Rajahmundry and quash the judgement of the Tribunal dated 31-12-1992 confirming that of the settlement officer in M.C.No.1 of 1980 dated 31-10-1980 by issuing any appropriate order or direction in the nature of a Writ of Certiorari and pass such other orders.

Counsel for the Petitioners:MR.C.POORNAIAH

Counsel for the Respondent No.1: MR.R.V.SUBBA RAO

Counsel for the Respondent No.2: G.P. for Tribunal

The Court made the following :

ORDER

1. This Writ Petition is filed seeking to assail the judgment passed by the Estate Abolition Tribunal, East Godavari District at Rajahmundry in T.A. 1 of 1981 dated 31-12-1992.

2. The petitioner herein filed M.C.1 of 1980 before the Settlement Officer, Anakapalli, under Section 56(1) of the Estate Abolition Act to declare that he is the lawful ryot in respect of the disputed land. The land in dispute is in his possession and enjoyment since times immemorial. Previously his ancestors used to pay the annual rent to the Pithapuram Zamindar who was the landlord in the first instance in respect of the schedule land. Subsequently, the land was gifted to first respondent deity. The deity was a darmila inamdar. It never exercised occupancy rights. The petitioner used to pay Rs.10/- per annum to the deity during the pre-abolition period. After the abolition

and taking over the estate the land was wrongly surveyed and ryotwari patta bearing No.162 was issued in favour of the respondent. Questioning that patta, and seeking declaration, he filed the petition.

3. The 1st respondent filed counter denying the averments of the petition. Neither the petitioner nor his ancestors in title had any possession or enjoyment of the land much less from 1-7-1938 to 1-7-1945. The respondent deity was granted a ryotwari patta and while the respondent has been the absolute owner of the property, Pille Gopalamurthy Paramasetti Sundaramma, Paramasetti Krishnamurthy and others trespassed into the same and the respondent filed a suit in O.S.38 of 1968 on the file of the District Munsif Court, Razole which was decreed on 30-4-1975. The matter was taken in appeal in A.S.35 of 1975 on the file of Sub Court, Razole which was dismissed. The settlement officer granted patta in respect of the land and the petitioner is not entitled to any patta. The schedule land is a ryoti land but not darmila inam land. The remedy of the petitioner if any, is to prefer an appeal to the Estate Abolition Tribunal but not before the Settlement Officer. There are no merits in the petition and it is liable to be dismissed.

4. Before the Settlement Officer, Anakapalli the petitioner examined himself as PW1 and also examined P. Ws. 2 and 3 and marked Exs.P1 to P3 whereas the respondent examined R.W.1 and marked Exs.R1 to R7.

5. On a consideration of both oral and documentary evidence adduced by the parties, the Settlement officer Anakapalli, rejected the application of the petitioner, holding that the petitioner is not the lawful ryot in respect of the schedule land.

6. Aggrieved by the order of the Settlement Officer, Anakapalle, the

petitioner preferred T.A.1 of 1981 before the Additional Tribunal, East Godavari, Rajahmundry.

7. In the appeal, the petitioner marked Exs.P4 to P7 whereas the respondent marked Exs.R8 as additional evidence. The Additional Tribunal after considering the material on record, dismissed the appeal confirming the order of the Settlement Officer, Anakapalli..

8. Aggrieved by the same, the petitioner herein filed W.P.No.295 of 1985 on the file of the High Court of A.P. Hyderabad and the High Court quashed the order of the Tribunal and remanded the matter to the Court below for fresh consideration.

9. After remand, the petitioner filed I.A.1128 of 1992 under Or. 41 Rule 27 C.P.C. to receive the documents mentioned in the petition as additional evidence. Accordingly, the petition was allowed and the documents were marked as Exs.P9 and P10 as additional evidence.

10. After going through the entire material placed before the Settlement officer and in the tribunal and on consideration of the documents marked as additional evidence, the Estate Abolition Tribunal dismissed the appeal confirming the order of the Settlement Officer.

11. Aggrieved by the said order, this Writ Petition has been preferred by the petitioner.

12. Heard both the learned counsel and perused the material available on record.

13. As seen from the record, P.W.1 who is the petitioner stated in his cross-examination that he does not know to whom the land belongs

and as to how he got the lands, He also not filed the cist receipts for either the reabolition period or for the subsequent period. Ex.P3 also does not mention the names of the petitioner and their ancestors. R.W.1 stated that Ac.0,30 cents of land under dispute in S.No.142/6 belongs to the temple and the petitioner never cultivated it. He also stated that the petitioner and his predecessors were never in the land and that they entered in the land in the year 1960 colluding with the Archaka of the temple. The petitioner never proved that he is a ryot of the land. The evidence adduced by the respondent shows that the respondent/temple has title over the schedule land. Therefore, both the Courts below came to right conclusion that the petitioner could not establish his possession for the crucial period from 1-7-1939 to 1-7-1945 for granting ryotwari patta in his favour and the petitioner began to agitate for the patta only after filing O.S.39 of 1968 and accordingly, dismissed the application. Therefore, the orders passed by both the Courts below do not warrant any interference by this Court.

14. Accordingly, the Writ Petition is dismissed. No costs.

19-08-2004.

Nrg/Hsd

Assistant Registrar

//true copy//

Section Officer

To

1.Sri Rajagopalavari swamy temple,Nadigadi village,hamlet of Dokkavari Gannavaram, Razoke tq. East Godavari dt.

2.The Estate Abolition Tribunal, East Godavari District at Rajahmundry.(with records)

3. 2 C.Cs to G.P. for Estate Abolition, High Courts Buildings, Hyderabad (OUT)

4. 2 C.D. copies.